

ASSEMBLY BILL

No. 814

Introduced by Assembly Member Krekorian

February 26, 2009

An act to amend Section 12021 of the Penal Code, relating to firearms.

LEGISLATIVE COUNSEL'S DIGEST

AB 814, as introduced, Krekorian. Firearms: surrender.

Existing law makes it an offense for a person convicted of a felony, who is addicted to narcotics, or, for a period of 10 years, for a person who is convicted of specified misdemeanors, to own, purchase, receive, have in their possession or under their custody or control any firearm, as specified. Existing law provides for a notice to a defendant of these provisions, as specified.

This bill would establish a procedure for defendants who own, have possession, or custody or control of firearms, to sell the firearm to a firearms dealer or relinquish the firearm to a law enforcement agency in order to comply with the prohibitions described above. The procedure would in part require the defendant to disclose, under penalty of perjury, whether the defendant owns or has possession or custody or control of any firearms and to list those firearms. The bill would provide procedures for persons in or out of custody to relinquish their firearms, including designating a law enforcement agency or a person as the defendant's require the defendant or the defendant's designee to file a form showing, among other things, the date the firearm was relinquished. Failure to timely file the form would, subject to exception, be an infraction punishable by a fine not exceeding \$100.

By expanding the scope of the offense of perjury, and creating a new infraction, this bill would impose a state-mandated local program. By imposing, additional duties on local law enforcement agencies, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 12021 of the Penal Code is amended to
2 read:
3 12021. (a) (1) Any person who has been convicted of a felony
4 under the laws of the United States, the State of California, or any
5 other state, government, or country or of an offense enumerated
6 in subdivision (a), (b), or (d) of Section 12001.6, or who is addicted
7 to the use of any narcotic drug, and who owns, purchases, receives,
8 or has in his or her possession or under his or her custody or control
9 any firearm is guilty of a felony.
10 (2) Any person who has two or more convictions for violating
11 paragraph (2) of subdivision (a) of Section 417 and who owns,
12 purchases, receives, or has in his or her possession or under his or
13 her custody or control any firearm is guilty of a felony.
14 (b) Notwithstanding subdivision (a), any person who has been
15 convicted of a felony or of an offense enumerated in Section
16 12001.6, when that conviction results from certification by the
17 juvenile court for prosecution as an adult in an adult court under
18 Section 707 of the Welfare and Institutions Code, and who owns
19 or has in his or her possession or under his or her custody or control
20 any firearm is guilty of a felony.
21 (c) (1) Except as provided in subdivision (a) or paragraph (2)
22 of this subdivision, any person who has been convicted of a

1 misdemeanor violation of Section 71, 76, 136.1, 136.5, or 140,
2 subdivision (d) of Section 148, Section 171b, 171c, 171d, 186.28,
3 240, 241, 242, 243, 243.4, 244.5, 245, 245.5, 246.3, 247, 273.5,
4 273.6, 417, 417.6, 422, 626.9, 646.9, 12023, or 12024, subdivision
5 (b) or (d) of Section 12034, Section 12040, subdivision (b) of
6 Section 12072, subdivision (a) of former Section 12100, Section
7 12220, 12320, or 12590, or Section 8100, 8101, or 8103 of the
8 Welfare and Institutions Code, any firearm-related offense pursuant
9 to Sections 871.5 and 1001.5 of the Welfare and Institutions Code,
10 or of the conduct punished in paragraph (3) of subdivision (g) of
11 Section 12072, and who, within 10 years of the conviction, owns,
12 purchases, receives, or has in his or her possession or under his or
13 her custody or control, any firearm is guilty of a public offense,
14 which shall be punishable by imprisonment in a county jail not
15 exceeding one year or in the state prison, by a fine not exceeding
16 one thousand dollars (\$1,000), or by both that imprisonment and
17 fine. The court, on forms prescribed by the Department of Justice,
18 shall notify the department of persons subject to this subdivision.
19 However, the prohibition in this paragraph may be reduced,
20 eliminated, or conditioned as provided in paragraph (2) or (3).

21 (2) Any person employed as a peace officer described in Section
22 830.1, 830.2, 830.31, 830.32, 830.33, or 830.5 whose employment
23 or livelihood is dependent on the ability to legally possess a
24 firearm, who is subject to the prohibition imposed by this
25 subdivision because of a conviction under Section 273.5, 273.6,
26 or 646.9, may petition the court only once for relief from this
27 prohibition. The petition shall be filed with the court in which the
28 petitioner was sentenced. If possible, the matter shall be heard
29 before the same judge who sentenced the petitioner. Upon filing
30 the petition, the clerk of the court shall set the hearing date and
31 shall notify the petitioner and the prosecuting attorney of the date
32 of the hearing. Upon making each of the following findings, the
33 court may reduce or eliminate the prohibition, impose conditions
34 on reduction or elimination of the prohibition, or otherwise grant
35 relief from the prohibition as the court deems appropriate:

36 (A) Finds by a preponderance of the evidence that the petitioner
37 is likely to use a firearm in a safe and lawful manner.

38 (B) Finds that the petitioner is not within a prohibited class as
39 specified in subdivision (a), (b), (d), (e), or (g) or Section 12021.1,
40 and the court is not presented with any credible evidence that the

1 petitioner is a person described in Section 8100 or 8103 of the
2 Welfare and Institutions Code.

3 (C) (i) Finds that the petitioner does not have a previous
4 conviction under this subdivision no matter when the prior
5 conviction occurred.

6 (ii) In making its decision, the court shall consider the
7 petitioner's continued employment, the interest of justice, any
8 relevant evidence, and the totality of the circumstances. The court
9 shall require, as a condition of granting relief from the prohibition
10 under this section, that the petitioner agree to participate in
11 counseling as deemed appropriate by the court. Relief from the
12 prohibition shall not relieve any other person or entity from any
13 liability that might otherwise be imposed. It is the intent of the
14 Legislature that courts exercise broad discretion in fashioning
15 appropriate relief under this paragraph in cases in which relief is
16 warranted. However, nothing in this paragraph shall be construed
17 to require courts to grant relief to any particular petitioner. It is
18 the intent of the Legislature to permit persons who were convicted
19 of an offense specified in Section 273.5, 273.6, or 646.9 to seek
20 relief from the prohibition imposed by this subdivision.

21 (3) Any person who is subject to the prohibition imposed by
22 this subdivision because of a conviction of an offense prior to that
23 offense being added to paragraph (1) may petition the court only
24 once for relief from this prohibition. The petition shall be filed
25 with the court in which the petitioner was sentenced. If possible,
26 the matter shall be heard before the same judge that sentenced the
27 petitioner. Upon filing the petition, the clerk of the court shall set
28 the hearing date and notify the petitioner and the prosecuting
29 attorney of the date of the hearing. Upon making each of the
30 following findings, the court may reduce or eliminate the
31 prohibition, impose conditions on reduction or elimination of the
32 prohibition, or otherwise grant relief from the prohibition as the
33 court deems appropriate:

34 (A) Finds by a preponderance of the evidence that the petitioner
35 is likely to use a firearm in a safe and lawful manner.

36 (B) Finds that the petitioner is not within a prohibited class as
37 specified in subdivision (a), (b), (d), (e), or (g) or Section 12021.1,
38 and the court is not presented with any credible evidence that the
39 petitioner is a person described in Section 8100 or 8103 of the
40 Welfare and Institutions Code.

1 (C) (i) Finds that the petitioner does not have a previous
2 conviction under this subdivision, no matter when the prior
3 conviction occurred.

4 (ii) In making its decision, the court may consider the interest
5 of justice, any relevant evidence, and the totality of the
6 circumstances. It is the intent of the Legislature that courts exercise
7 broad discretion in fashioning appropriate relief under this
8 paragraph in cases in which relief is warranted. However, nothing
9 in this paragraph shall be construed to require courts to grant relief
10 to any particular petitioner.

11 (4) Law enforcement officials who enforce the prohibition
12 specified in this subdivision against a person who has been granted
13 relief pursuant to paragraph (2) or (3) shall be immune from any
14 liability for false arrest arising from the enforcement of this
15 subdivision unless the person has in his or her possession a certified
16 copy of the court order that granted the person relief from the
17 prohibition. This immunity from liability shall not relieve any
18 person or entity from any other liability that might otherwise be
19 imposed.

20 (d) (1) Any person who, as an express condition of probation,
21 is prohibited or restricted from owning, possessing, controlling,
22 receiving, or purchasing a firearm and who owns, purchases,
23 receives, or has in his or her possession or under his or her custody
24 or control, any firearm but who is not subject to subdivision (a) or
25 (c) is guilty of a public offense, which shall be punishable by
26 imprisonment in a county jail not exceeding one year or in the
27 state prison, by a fine not exceeding one thousand dollars (\$1,000),
28 or by both that imprisonment and fine. The court, on forms
29 provided by the Department of Justice, shall notify the department
30 of persons subject to this subdivision. The notice shall include a
31 copy of the order of probation and a copy of any minute order or
32 abstract reflecting the order and conditions of probation.

33 (2) (A) (i) For any person who is subject to subdivision (a),
34 (b), or (c), the court shall, at the time judgment is imposed, ~~provide~~
35 ~~on a form supplied by the Department of Justice, a notice to the~~
36 ~~defendant prohibited by this section from owning, purchasing,~~
37 ~~receiving, possessing or having under his or her custody or control,~~
38 ~~any firearm. The notice shall inform the defendant of the~~
39 ~~prohibition regarding firearms and include a form to facilitate the~~
40 ~~transfer of firearms. instruct the defendant that he or she is~~

1 prohibited from owning, purchasing, receiving, possessing, or
2 having under his or her custody or control, any firearm, and that
3 he or she shall relinquish all firearms in the manner provided in
4 this section. The court shall provide a notice and form which shall
5 state the prohibition, the manner in which firearms may be
6 relinquished, and the penalty imposed for failure to comply. The
7 form shall require the defendant to declare, under penalty of
8 perjury, whether or not he or she owned, possessed, or had in his
9 or her custody any firearms at the time judgment was imposed,
10 and shall require the defendant to specify, with as much detail as
11 possible, the make, model, and location of each of the firearms.
12 The form shall require the defendant to relinquish all firearms
13 within five days of the earlier of judgment or release from custody,
14 or within 14 days if he or she is in custody continuously for that
15 period following judgment, and to state the date that each firearm
16 was relinquished and the name of the firearms dealer or law
17 enforcement agency to which it was relinquished. The form shall
18 inform the defendant that a person who relinquishes any firearm
19 to a law enforcement agency pursuant to this section voluntarily
20 abandons all rights and claims to the relinquished firearm, and
21 shall not be entitled to sell or transfer title of the firearm to anyone
22 following relinquishment of the firearm to the law enforcement
23 agency.

24 (ii) The form shall require the defendant to explain in detail the
25 circumstances surrounding the loss or theft of any firearm that
26 the defendant previously owned, possessed, or had under his or
27 her custody or control, the loss or theft of which renders him or
28 her unable to fully comply with these provisions. The form shall
29 further require the defendant to explain in detail any action taken
30 to report the loss or theft to any law enforcement agency or
31 insurance provider. The arresting law enforcement agency shall
32 forward to the Department of Justice any form submitted by a
33 defendant which identifies lost or stolen firearms. The form shall
34 also provide for the defendant to grant power of attorney over any
35 identified firearms and name a designee, pursuant to subparagraph
36 (D). Failure to provide the notice shall not be a defense to a
37 violation of this section.

38 (B) For any person who is subject to subdivision (a), (b), or (c),
39 following the imposition of judgment the defendant shall relinquish
40 any firearm he or she owns, possesses, or has within his or her

1 custody or control in the manner described in subparagraphs (C)
2 and (D).

3 (C) (i) For any defendant who is not in custody following the
4 imposition of judgment, the defendant shall dispose of any firearm
5 he or she owns, possesses, or has within his or her custody or
6 control within five days of the imposition of judgment by
7 surrendering the firearm to the control of local law enforcement
8 officials, or by selling the firearm to a licensed firearms dealer.

9 (ii) During the five days following the imposition of judgment,
10 the defendant shall not be prosecuted under subdivision (a), (b),
11 or (c) for his or her ownership, custody or control of a firearm,
12 or his or her possession of a firearm either within his or her home
13 or while lawfully transporting the firearm in order to comply with
14 these provisions.

15 (iii) Following relinquishment, but within the five days following
16 the imposition of judgment, the defendant shall submit the
17 completed form described in subparagraph (A) to the arresting
18 law enforcement agency.

19 (D) (i) For any defendant who is in custody following the
20 imposition of judgment, the defendant shall, using the form
21 described in subparagraph (A), grant power of attorney over any
22 firearm identified pursuant to subparagraph (A) to a designee not
23 otherwise prohibited from possessing firearms under state and
24 federal law. The defendant may name a law enforcement agency
25 as his or her designee.

26 (ii) Within 14 days following the imposition of judgment, the
27 designee shall dispose of any firearm by surrendering the firearm
28 to the control of local law enforcement officials, or by selling the
29 firearm to a licensed firearms dealer.

30 (iii) During the 14 days following the imposition of judgment,
31 a defendant who is in custody shall not be prosecuted under
32 subdivision (a), (b), or (c) for his or her ownership of a firearm
33 to be relinquished.

34 (iv) Following relinquishment, but within the 14 days following
35 the imposition of judgment, the designee shall submit the completed
36 form described in subparagraph (A) to the arresting law
37 enforcement agency.

38 (v) If the defendant is released from custody during the 14 days
39 following the imposition of judgment and a designee has not yet
40 taken temporary possession of any firearm to be relinquished as

1 *described above, the defendant shall, within five days following*
2 *his or her release, relinquish any firearm in the manner described*
3 *in subparagraph (C).*

4 *(E) Where relinquishment of a firearm threatens a defendant's*
5 *constitutional right against self-incrimination, the defendant shall*
6 *have use immunity for the act of relinquishment.*

7 *(F) Failure by a defendant who was not in custody or of a*
8 *designee of a defendant who was in custody, except a designee*
9 *that is a law enforcement agency, to timely file the completed form*
10 *described in subparagraph (A) with the arresting law enforcement*
11 *agency shall constitute an infraction punishable by a fine not*
12 *exceeding one hundred dollars (\$100).*

13 *(G) Local law enforcement agencies are urged to sign up with*
14 *the Department of Justice to receive updated information from the*
15 *Prohibited Armed Persons File, as described in Sections 12010*
16 *to 12012, inclusive. Local law enforcement is further encouraged*
17 *to review this information against the declarations in the submitted*
18 *forms described in subparagraph (A) and to retrieve illegally*
19 *possessed firearms whenever possible.*

20 *(e) Any person who (1) is alleged to have committed an offense*
21 *listed in subdivision (b) of Section 707 of the Welfare and*
22 *Institutions Code, an offense described in subdivision (b) of Section*
23 *1203.073, any offense enumerated in paragraph (1) of subdivision*
24 *(c), or any offense described in subdivision (a) of Section 12025,*
25 *subdivision (a) of Section 12031, or subdivision (a) of Section*
26 *12034, and (2) is subsequently adjudged a ward of the juvenile*
27 *court within the meaning of Section 602 of the Welfare and*
28 *Institutions Code because the person committed an offense listed*
29 *in subdivision (b) of Section 707 of the Welfare and Institutions*
30 *Code, an offense described in subdivision (b) of Section 1203.073,*
31 *any offense enumerated in paragraph (1) of subdivision (c), or any*
32 *offense described in subdivision (a) of Section 12025, subdivision*
33 *(a) of Section 12031, or subdivision (a) of Section 12034, shall*
34 *not own, or have in his or her possession or under his or her*
35 *custody or control, any firearm until the age of 30 years. A*
36 *violation of this subdivision shall be punishable by imprisonment*
37 *in a county jail not exceeding one year or in the state prison, by a*
38 *fine not exceeding one thousand dollars (\$1,000), or by both that*
39 *imprisonment and fine. The juvenile court, on forms prescribed*
40 *by the Department of Justice, shall notify the department of persons*

1 subject to this subdivision. Notwithstanding any other law, the
2 forms required to be submitted to the department pursuant to this
3 subdivision may be used to determine eligibility to acquire a
4 firearm.

5 (f) Subdivision (a) shall not apply to a person who has been
6 convicted of a felony under the laws of the United States unless
7 either of the following criteria is satisfied:

8 (1) Conviction of a like offense under California law can only
9 result in imposition of felony punishment.

10 (2) The defendant was sentenced to a federal correctional facility
11 for more than 30 days, or received a fine of more than one thousand
12 dollars (\$1,000), or received both punishments.

13 (g) (1) Every person who purchases or receives, or attempts to
14 purchase or receive, a firearm knowing that he or she is prohibited
15 from doing so by a temporary restraining order or injunction issued
16 pursuant to Section 527.6 or 527.8 of the Code of Civil Procedure,
17 a protective order as defined in Section 6218 of the Family Code,
18 a protective order issued pursuant to Section 136.2 or 646.91 of
19 this code, or a protective order issued pursuant to Section 15657.03
20 of the Welfare and Institutions Code, is guilty of a public offense,
21 which shall be punishable by imprisonment in a county jail not
22 exceeding one year or in the state prison, by a fine not exceeding
23 one thousand dollars (\$1,000), or by both that imprisonment and
24 fine.

25 (2) Every person who owns or possesses a firearm knowing that
26 he or she is prohibited from doing so by a temporary restraining
27 order or injunction issued pursuant to Section 527.6 or 527.8 of
28 the Code of Civil Procedure, a protective order as defined in
29 Section 6218 of the Family Code, a protective order issued pursuant
30 to Section 136.2 or 646.91 of this code, or a protective order issued
31 pursuant to Section 15657.03 of the Welfare and Institutions Code,
32 is guilty of a public offense, which shall be punishable by
33 imprisonment in a county jail not exceeding one year, by a fine
34 not exceeding one thousand dollars (\$1,000), or by both that
35 imprisonment and fine.

36 (3) The Judicial Council shall provide notice on all protective
37 orders that the respondent is prohibited from owning, possessing,
38 purchasing, receiving, or attempting to purchase or receive a
39 firearm while the protective order is in effect. The order shall also
40 state that the firearm shall be relinquished to the local law

1 enforcement agency for that jurisdiction or sold to a licensed gun
2 dealer, and that proof of surrender or sale shall be filed within a
3 specified time of receipt of the order. The order shall state the
4 penalties for a violation of the prohibition. The order shall also
5 state on its face the expiration date for relinquishment.

6 (4) If probation is granted upon conviction of a violation of this
7 subdivision, the court shall impose probation consistent with
8 Section 1203.097.

9 (h) (1) A violation of subdivision (a), (b), (c), (d), or (e) is
10 justifiable where all of the following conditions are met:

11 (A) The person found the firearm or took the firearm from a
12 person who was committing a crime against him or her.

13 (B) The person possessed the firearm no longer than was
14 necessary to deliver or transport the firearm to a law enforcement
15 agency for that agency's disposition according to law.

16 (C) If the firearm was transported to a law enforcement agency,
17 it was transported in accordance with paragraph (18) of subdivision
18 (a) of Section 12026.2.

19 (D) If the firearm is being transported to a law enforcement
20 agency, the person transporting the firearm has given prior notice
21 to the law enforcement agency that he or she is transporting the
22 firearm to the law enforcement agency for disposition according
23 to law.

24 (2) Upon the trial for violating subdivision (a), (b), (c), (d), or
25 (e), the trier of fact shall determine whether the defendant was
26 acting within the provisions of the exemption created by this
27 subdivision.

28 (3) The defendant has the burden of proving by a preponderance
29 of the evidence that he or she comes within the provisions of the
30 exemption created by this subdivision.

31 (i) Subject to available funding, the Attorney General, working
32 with the Judicial Council, the California Alliance Against Domestic
33 Violence, prosecutors, and law enforcement, probation, and parole
34 officers, shall develop a protocol for the implementation of the
35 provisions of this section. The protocol shall be designed to
36 facilitate the enforcement of restrictions on firearm ownership,
37 including provisions for giving notice to defendants who are
38 restricted, provisions for informing those defendants of the
39 procedures by which defendants shall dispose of firearms when
40 required to do so, provisions explaining how defendants shall

1 provide proof of the lawful disposition of firearms, and provisions
2 explaining how defendants may obtain possession of seized
3 firearms when legally permitted to do so pursuant to this section
4 or any other provision of law. The protocol shall be completed on
5 or before January 1, 2005.

6 SEC. 2. No reimbursement is required by this act pursuant to
7 Section 6 of Article XIII B of the California Constitution for certain
8 costs that may be incurred by a local agency or school district
9 because, in that regard, this act creates a new crime or infraction,
10 eliminates a crime or infraction, or changes the penalty for a crime
11 or infraction, within the meaning of Section 17556 of the
12 Government Code, or changes the definition of a crime within the
13 meaning of Section 6 of Article XIII B of the California
14 Constitution.

15 However, if the Commission on State Mandates determines that
16 this act contains other costs mandated by the state, reimbursement
17 to local agencies and school districts for those costs shall be made
18 pursuant to Part 7 (commencing with Section 17500) of Division
19 4 of Title 2 of the Government Code.